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5 **IN THE SUPREME COURT**  
**STATE OF ARIZONA**

6 In the Matter of a PETITION ) Supreme Court No. R-\_\_\_\_\_  
7 TO AMEND SUPREME )  
COURT RULE 38(a) ) Petition to Amend  
8 \_\_\_\_\_) Supreme Court Rule 38(a)

9 Pursuant to Rule 28 of the Rules of the Supreme Court, the State Bar of  
10 Arizona petitions the Arizona Supreme Court to amend Rule 38(a) of the Rules  
11 of the Supreme Court, to increase funding to our State's legal services  
12 providers by (1) increasing the fees paid by pro hac vice attorneys by fifteen  
13 percent to equal the dues paid by active members of the State Bar of Arizona  
14 and (2) allocating this additional fifteen percent to the Arizona Foundation for  
15 Legal Services and Education (AFLSE) to be used to fund organizations that  
16 provide legal services to indigent persons in civil cases, as set forth in  
17 Appendix C of the attached report of the State Bar of Arizona Legal Services  
18 Committee Report dated December 14, 2007 (SBA LSC Report).

1       **I. Background**

2       This proposed amendment to Rule 38(a) is a result of a recommendation  
3       from the State Bar of Arizona's Legal Services Committee. The mission of  
4       this committee is to study and recommend ways to meet the legal needs of the  
5       indigent and working-poor in Arizona. The membership of this committee  
6       consists of representatives from Arizona's three legal services providers,  
7       members of the bench, representatives from Arizona State University and  
8       University of Arizona Colleges of Law, and members of the State Bar of  
9       Arizona. *See* attached SBA LSC Report, at 15-16. The Executive Director of  
10      the AFLSE also attends these meetings.

11      The State Bar of Arizona Board of Governors at its December 14, 2007  
12      meeting adopted the Committee's report and recommendation. In addition, the  
13      AFLSE Board of Directors voted to support the recommendation set forth by  
14      the Committee at its December 13, 2007 meeting.

15      Providing legal services to the indigent is a core objective of the legal  
16      profession. The preamble to the Rules of Professional Conduct recognizes the  
17      important role that Arizona lawyers provide in assuring that access to justice is  
18      available to all Arizonans. It provides that:

19      A lawyer should be mindful of deficiencies in the administration of justice  
20      and of the fact that the poor, and sometimes persons who are not poor,  
    cannot afford adequate legal assistance. Therefore, all lawyers should

1 devote professional time and resources and use civic influence to ensure  
2 equal access to our system of justice for all those who because of  
economic or social barriers cannot afford or secure adequate legal counsel.

3 Moreover, Rule 38(e)(1), Rules of the Supreme Court of Arizona, provides  
4 that “[i]ndividuals admitted to the practice of law in Arizona have a  
5 responsibility to provide competent legal services for all persons, including  
6 those unable to pay for such services”.

7 Thousands of Arizonans go without legal representation in civil matters  
8 each year and the need for assistance is vastly greater than the resources  
9 available. For the many low-income Arizonans, our legal services programs  
10 represent their only means to access the justice system. The clients helped by  
11 Arizona’s legal services providers are as diverse as the state, encompassing all  
12 races, ethnic groups, and ages. More than two thirds of clients funded through  
13 the federal Legal Services Corporation (LSC), including Arizona’s legal  
14 services providers, are women, many with children. Another 10 percent are  
15 senior citizens.

16 Legal services clients include the working poor, veterans, Native  
17 Americans, family farmers, people with disabilities, and victims of natural  
18 disasters. Many were formerly of moderate means but became poor as a result  
19 of family tragedy, illness, or sudden unemployment. Federally funded legal  
20

1 services programs help thousands of Americans each year restore their  
2 economic independence through advocacy within the U.S. civil justice system.

3 The 2000 U.S. Census found there are more than 937,500 individuals in  
4 Arizona—19 percent of the population—who have incomes below 125 percent  
5 of the federal poverty guidelines. This means they are financially eligible for  
6 legal services from one of Arizona's three LSC-funded providers. In addition,  
7 more than 743,000 individuals have incomes between 125 and 200 percent of  
8 federal poverty guidelines. Together, almost 1.7 million individuals or 33  
9 percent of Arizonans have incomes below 200 percent of poverty. A chart of  
10 the 2007 federal poverty guidelines is contained in Appendix A of the attached  
11 SBA LSC Report.

12 Earlier this year the AFLSE conducted an independent large-scale  
13 statewide study that establishes definitive data pertaining to the incidence and  
14 prevalence of the unmet civil legal needs of Arizona. This report, titled  
15 *Arizonans Speak Out*, summarizes the key findings of a telephone survey of  
16 1,067 individuals conducted over the summer of 2006. The study was  
17 completed with a 95 percent confidence level and a 3 percent margin of error.

18 The results of the survey establish that over 56 percent of the Arizona  
19 households with annual income of \$47,000 or less stated they could not afford  
20 a private attorney to assist with their legal needs. Not surprisingly, the gap

1 rises to over 71 percent with the households making under \$32,000 stating they  
2 could not afford the legal representation needed. The gap was also higher than  
3 50 percent for minorities, single heads of households, females, and adults  
4 under the 35 years of age. Topping the list of civil legal problem categories  
5 are consumer issues (bill collection, utility service, and purchases and  
6 services), civil family matters, and issues of discrimination.

7 Three out of four people interviewed did not know where to receive legal  
8 aid services for their legal needs presented. Forty-one percent of the people  
9 tried to take care of the problem themselves. Twenty-one percent took no  
10 action to defend their situation because they didn't know what to do, it would  
11 cost too much, they didn't have time, or they feared retaliation.

12 The AFLSE's findings here in Arizona reflect those recently reported by  
13 the LSC, in its report, *Documenting the Justice Gap in America: The Current*  
14 *Unmet Civil Legal Needs of Low-Income Americans*, September 2005. Most  
15 significantly, this report found that for each person who received legal  
16 assistance from an LSC-funded program, at least one eligible client was turned  
17 away due to lack of resources. The Report, unanimously approved by LSC's  
18 Board of Directors, found that a doubling of federal and non-federal support of  
19  
20

1 LSC grantees would be necessary just to serve the individuals and families  
2 who were eligible for and seeking assistance from LSC-funded programs<sup>1</sup>.

## 3 **II. Overview and Summary of Proposed Changes**

4 Pro hac vice is Latin for “this time only” and refers to the application of  
5 an out-of-state lawyer to appear in court for a particular case, even though a  
6 lawyer is not licensed to practice in that state.

7 In Arizona, the State Bar administers the pro hac vice program established  
8 by this Court. See Rule 38(a)(3)(A), Ariz. R. Sup. Ct. Those appearing pro  
9 hac vice are required to pay a nonrefundable application fee equal to 85% of  
10 the current dues paid by active members of the State Bar of Arizona. *Id.* A  
11 renewal fee in the same amount must be paid for each additional year that the  
12 nonresident attorney continues to act as counsel in the cause. Rule 38(a)(8).  
13 The income collected through the pro hac vice fees was approximately  
14 \$408,000 in 2006, and is projected to be approximately \$460,000 in 2007.

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16 <sup>1</sup> Similar findings are contained in other state studies. See *Achieving Access to Justice for Hawai'i's*  
17 *People: The 2007 Assessment of Civil Legal Needs and Barriers*  
18 *of Low and Moderate-Income People in Hawai'i*, A Report of the Access to Justice Hui, (finding 80  
19 percent of Hawaii poor and moderate income residents unable to obtain legal help when they need it)  
20 available at  
[www.nlada.org/DMS/Documents/1197404731.95/Hawaii%20Legal%20Needs%20Study%2011-07.pdf](http://www.nlada.org/DMS/Documents/1197404731.95/Hawaii%20Legal%20Needs%20Study%2011-07.pdf);  
*Bridging the Justice Gap: Wisconsin's Unmet Legal Needs*, State Bar of Wisconsin study, March 2007  
(finding more than 500,000 Wisconsin residents face serious civil legal problems without any legal  
assistance), available at [www.wisbar.org/am/template.cfm?section=bridging\\_the\\_justice\\_gap](http://www.wisbar.org/am/template.cfm?section=bridging_the_justice_gap); *State*  
*Needs Assessment*, Legal Aid of Nebraska, February, 15, 2007, available at  
[www.nlada.org/DMS/Documents/1185221235.6/NE%20Legal%20Aid%202007%20Needs%20Assessment%20Final.pdf](http://www.nlada.org/DMS/Documents/1185221235.6/NE%20Legal%20Aid%202007%20Needs%20Assessment%20Final.pdf).

1       The Rules of Professional Conduct call on Arizona lawyers to devote  
2 professional time and resources to increase access to justice by those unable to  
3 afford legal services. Moreover, Rule 38(e)(1), Rules of the Supreme Court of  
4 Arizona, provides that “[i]ndividuals admitted to the practice of law in Arizona  
5 have a responsibility to provide competent legal services for all persons,  
6 including those unable to pay for such services”.

7       Lawyers who make pro hac vice appearances from other states are not  
8 active members of the State Bar of Arizona and are not likely to devote their  
9 time and resources to help increase access to justice in Arizona simply because  
10 they do not by definition reside or work here. These lawyers are not required  
11 to participate in programs required of Arizona lawyers such as mandatory  
12 arbitration and are unlikely to maintain their client trust accounts with Arizona  
13 banks thereby decreasing the amount of interest revenue generated for  
14 Arizona’s legal services providers through the Interest on Lawyers Trust  
15 Accounts (IOLTA) program. The IOLTA program is a significant source of  
16 revenue for Arizona’s legal services providers. *See* Appendix B of the  
17 attached SBA LSC Report. Moreover, these lawyers are unlikely to devote 50  
18 hours a year in pro bono services in Arizona as recommended in E.R. 6.1.

19       It is appropriate to allocate a portion of the pro hac vice fees generated  
20 from these lawyers for the privilege of appearing and practicing law in Arizona

1 so that they may join the efforts of the State Bar of Arizona membership to  
2 increase access to justice by the indigent in our state. Amending Rule 38(a) to  
3 increase the fees paid by pro hac vice attorneys by fifteen percent and  
4 allocating this additional fifteen percent to our legal services providers is a fair  
5 proposal to help accomplish our profession's commitment to assure that legal  
6 services are available to all persons regardless of their income or status.

7 Pro hac vice fees have been used to fund legal services in other states. In  
8 recent years, several states that did not already have a pro hac vice fee have  
9 instituted one and then, in contrast to this proposal, used all or most of the  
10 revenue to fund civil legal services for the poor. Innovative Fundraising Ideas  
11 for Legal Services, American Bar Association (2004 Ed.) In 2001, Oregon  
12 became the first to authorize the fee for legal services, followed relatively  
13 quickly by Alabama, Mississippi, Texas, Missouri, New Mexico, and  
14 Pennsylvania.

15 In Oregon, the legislature authorized the rule in 2001, which was then  
16 implemented by the state supreme court in 2002. The fee is \$250 per case per  
17 year and in 2004 generated \$93,000. The legislation provides that the funds  
18 will be used for "legal services provided through the Legal Services Program  
19 established under ORS 9.572", which requires the Oregon State Bar to provide  
20



standards and guidelines for legal service providers receiving funding. O.R.S. § 9.241; *see also* Rule 3.170(6), Oregon Uniform Trial Court Rules.

In Mississippi, the Supreme Court authorized the pro hac vice rule in early 2003. The fee is \$220, of which is allocated for legal services. Rule 46(b)(5), Mississippi Rules of Appellate Procedure. The first year it generated approximately \$175,000. The payments are made to the Mississippi Bar to be used to provide legal services to the indigent.

In Texas, the Texas rule was authorized by the legislature in September, 2003. Tex. Govt. Code Ann. § 82.0361(d). The fee per case in Texas is \$250, and it brought in about \$366,500 in 2005. The funding is administered by the Texas IOLTA program, which also administers the state legislative (filing fee surcharge and appropriation) funds for legal services.

In Missouri, the Supreme Court authorized the rule in 2002. The fee is \$100, it generated \$93,500 in 2004, and the funds go to civil legal services programs in the state. Rules 6.01(m), 6.07(a), Rules Governing the Missouri Bar and the Judiciary.

In New Mexico, the Supreme Court authorized the rule in late 2004. The fee is \$250, and it is estimated that the first year revenue will be \$75,000. Rule 24-106(D), NMRA. Funds are paid to the New Mexico State Bar Foundation for distribution to legal services providers.

1       The Supreme Court of Alabama, recently increased the pro hac vice fee  
2       from \$100 to \$300 per applicant, per case beginning with all applications filed  
3       after January 1, 2008. The additional \$200 will be paid to the Alabama Law  
4       Foundation for use for indigent civil legal services. Rule VII, Rules Governing  
5       Admission to the Alabama State Bar; *see also* Letter from Samuel N. Crosby,  
6       President of the Alabama State Bar to Alabama Supreme Court Chief Justice  
7       Sue Bell Cobb (October 30, 2007) (on file with the Alabama State Bar).

8       On June 29, 2007, the Supreme Court of Pennsylvania adopted a first-  
9       time-ever fee for pro hac vice admission, and designated the proceeds to go to  
10      the Interest On Lawyers Trust Account program, which funds civil legal  
11      services for Pennsylvanians who cannot afford to pay for those services. Rule  
12      1012.1, Pennsylvania Rule of Civil Procedure, available at  
13      [www.courts.state.pa.us/index/aopc/pressreleases/prrel07629.asp](http://www.courts.state.pa.us/index/aopc/pressreleases/prrel07629.asp). Under this  
14      program an attorney seeking admission pro hac vice with respect to a case  
15      must pay a fee of \$100 to the Pennsylvania Interest on Lawyer Trust Account  
16      Board. Section 81.505(a), Pennsylvania Interest on Lawyer Trust Account  
17      Board Regulations for Pro Hac Vice Admission, available at  
18      [www.courts.state.pa.us/index/supctcmtes/iolta/62ioltarule.pdf](http://www.courts.state.pa.us/index/supctcmtes/iolta/62ioltarule.pdf).

19      The proposed rule that accompanies this petition was approved by the  
20      Board of Governors. It is the Board's considered opinion that the proposed

1 amendments are appropriate and will serve the interests of the legal profession,  
2 the Supreme Court, and the public at large. More importantly, this proposal  
3 will establish another critical resource to increase access to justice for the  
4 indigent in Arizona.

### 5 **III. Text of Proposed Rule Change**

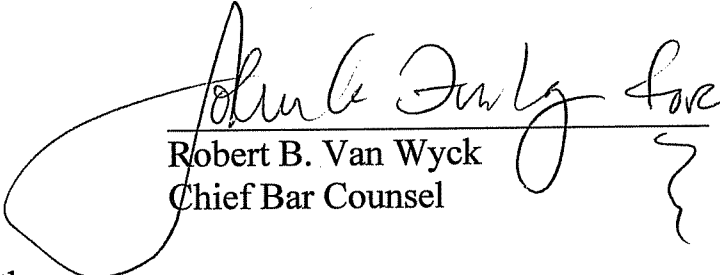
6 The text of the proposed rule change is set forth in Appendix C of the  
7 attached SBA LSC Report. The changes are indicated with additions shown in  
8 all capital letters and deletions shown with a strikeout line.

### 9 **IV. Conclusion**

10 For the reasons set forth above, the State Bar of Arizona respectfully  
11 petitions this Court to amend Rule 38(a) of the Rules of the Supreme Court, as  
12 set forth in Appendix C of the attached SBA LSC Report.

13 Respectfully submitted this 21<sup>ST</sup> day of December, 2007.

14 State Bar of Arizona

15   
16 Robert B. Van Wyck  
17 Chief Bar Counsel

18 Electronic copy filed with the  
19 Clerk of the Supreme Court of Arizona  
this 21<sup>ST</sup> day of December, 2007.

20 by: Nedra Brown

# **LEGAL SERVICES COMMITTEE REQUEST TO STATE BAR OF ARIZONA BOARD OF GOVERNORS**

**December 14, 2007**

If the concept of “equal justice for all” is to be a reality in Arizona, funding must be increased to our State’s legal services providers. In 2004, at the recommendation of the State Bar of Arizona Access to Justice Task Force, the Board of Governors unanimously adopted the proposition that the legal services providers in Arizona need additional funding to adequately meet the current and future need of funding to the very poor in civil matters.

Following the work of the Access to Justice Task Force, the Legal Services Committee now respectfully requests that the Board of Governors petition the Arizona Supreme Court to amend Rule 38(a), Rules of the Supreme Court of Arizona, as set forth in Appendix C, to increase funding to our State’s legal services providers by (1) increasing the fees paid by pro hac vice attorneys by fifteen percent to equal the dues paid by active members of the State Bar of Arizona and (2) allocating this additional fifteen percent to these organizations.

## **I. Introduction**

The preamble to the Rules of Professional Conduct recognizes the important role that Arizona lawyers provide in assuring that access to justice is available to all Arizonans. It provides that:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

Moreover, Rule 38(e)(1), Rules of the Supreme Court of Arizona, provides that “[i]ndividuals admitted to the practice of law in Arizona have a responsibility to provide competent legal services for all persons, including those unable to pay for such services”.

Thousands of Arizonans go without legal representation in civil matters each year.<sup>1</sup> Although steps have been taken to increase the resources available to Arizona’s legal services

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<sup>1</sup> The extent of this problem was documented by the Arizona Foundation for Legal Services and Education in a comprehensive legal needs survey completed earlier this year titled *Arizonans Speak Out*, and the State Bar of Arizona’s Access Justice Task Force Report presented to the Board of Governors at its October 17, 2003 meeting. See also Scott Bales & Joseph Kanefield, *Promoting Access to Justice in Arizona: An Urgent Need*, Arizona Attorney, April 2004, at 20.

providers, including a commendable voluntary dues opt out program initiated by the Board of Governors in 2004, the need for assistance is vastly greater than the resources available.<sup>2</sup>

For millions of low-income Americans, legal services programs represent their only means to access the justice system. The clients helped by Arizona's legal services providers are as diverse as the nation, encompassing all races, ethnic groups, and ages. More than two thirds of clients funded through the federal Legal Services Corporation, including Arizona's legal services providers, are women, many with children. Another 10 percent are senior citizens.<sup>3</sup>

Legal services clients include the working poor, veterans, Native Americans, family farmers, people with disabilities, and victims of natural disasters. Many were formerly of moderate means but became poor as a result of family tragedy, illness, or sudden unemployment. Federally funded legal services programs help thousands of Americans each year restore their economic independence through advocacy within the U.S. civil justice system.<sup>4</sup>

The 2000 U.S. Census found there are more than 937,500 individuals in Arizona—19 percent of the population—who have incomes below 125 percent of the federal poverty guidelines. This means they are financially eligible for legal services from one of Arizona's three LSC-funded providers. In addition, more than 743,000 individuals have incomes between 125 and 200 percent of federal poverty guidelines. Together, almost 1.7 million individuals or 33 percent of Arizonans have incomes below 200 percent of poverty. A chart of the 2007 federal poverty guidelines is contained in Appendix A.

Earlier this year the Arizona Foundation for Legal Services and Education conducted an independent large-scale statewide study that establishes definitive data pertaining to the incidence and prevalence of the unmet civil legal needs of Arizona. This report, titled *Arizonans Speak Out*, summarizes the key findings of a telephone survey of 1,067 individuals conducted over the summer of 2006. The study was completed with a 95 percent confidence level and a 3 percent margin of error.

The results of the survey establish that over 56 percent of the Arizona households with annual income of \$47,000 or less stated they could not afford a private attorney to assist with their legal needs. Not surprisingly, the gap rises to over 71 percent with the households making under \$32,000 stating they could not afford the legal representation needed. The gap was also higher than 50 percent for minorities, single heads of households, females, and adults under the 35 years of age. Topping the list of civil legal problem categories are consumer issues (bill

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<sup>2</sup> On the recommendation of the Access to Justice Task Force, the Board of Governors also has also voted the past three years to support a \$5 increase on the civil filing fee to supplement Arizona's legal services providers. Senate Bill 1016 was introduced earlier this year in the Arizona Legislature by Senator Jim Waring at the request of the State Bar to accomplish this goal. In addition, the Board of Governors has voted to support the Arizona Foundation for Legal Services and Education ongoing effort to secure legislation that would use interest from escrow accounts to fund legal services similar to the current Interest on Lawyers Trust Accounts (IOLTA) program. See House Bill 2733 (2007). Even if these proposals become law, the revenue generated will still fall far short of what is needed to adequately meet the civil legal needs of the poor in Arizona.

<sup>3</sup> Legal Services Corporation 2003-04 Annual Report, [www.lsc.gov/about/pdfs/AnnualReport2003-2004.pdf](http://www.lsc.gov/about/pdfs/AnnualReport2003-2004.pdf), at 8.

<sup>4</sup> *Id.*

collection, utility service, and purchases and services), civil family matters, and issues of discrimination.

Three out of four people interviewed did not know where to receive legal aid services for their legal needs presented. Forty-one percent of the people tried to take care of the problem themselves. Twenty-one percent took no action to defend their situation because they didn't know what to do, it would cost too much, they didn't have time, or they feared retaliation.

The Foundation's findings here in Arizona reflect those recently reported by the Legal Services Corporation, in its report, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, September 2005. Most significantly, this report found that for each person who received legal assistance from an LSC-funded program, at least one eligible client was turned away due to lack of resources. The Report, unanimously approved by LSC's Board of Directors, found that a doubling of federal and non-federal support of LSC grantees would be necessary just to serve the individuals and families who were eligible for and seeking assistance from LSC-funded programs.

In 2003, the Access to Justice Task Force made a series of recommendation to the Board of Governors to consider in accomplishing its objective of increasing the resources available to Arizona's legal services providers.<sup>5</sup> One of the recommendations was allocating a portion of the pro hac vice fees to fund legal aid. When the final recommendations were made to the Board in 2004, the Task Force decided to wait on this proposal because the pro hac vice program as administered by the State Bar was still fairly new and it was necessary to determine how much of the pro hac vice income was necessary to fund the disciplinary matters involving lawyers appearing pro hac vice.

Now that the program has been in place for several years the statistics obtained from Bar Counsel establish that attorneys admitted pro hac vice have not been the subject of disciplinary proceedings at a rate that justifies allocating all of the fees paid by these attorneys solely for disciplinary purposes.<sup>6</sup> There are approximately 500 attorneys admitted per year under the pro hac vice rule. This compares to approximately 13,000 active members of the State Bar of

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<sup>5</sup> The Task Force recommended that the State Bar of Arizona evaluate several funding proposals and work to implement increased funding for legal aid by supporting a surcharge on civil filing fees, a surcharge on civil and criminal fines, a membership dues opt-out program, a surcharge on document preparation fees, the allocation of pro hac vice fees, and requesting a percentage of large settlements.

<sup>6</sup> Anecdotes compiled by Arizona's representatives to the recent Equal Justice Conference sponsored by the National Legal Aid and Defender Association in Denver from March 22-24, 2007, support the contention that pro hac vice admission has no correlation with increased disciplinary activity. At a session on Friday, March 23, 2007, entitled "Building Support from the Judiciary to Increase Funding for Legal Services", a former Supreme Court Justice from Texas and a current Supreme Court Justice from Mississippi reported on their states' efforts, without opposition from their respective State Bars, to direct pro hac vice fees to legal services. (Indeed, under the Texas model, the fees go directly to the Board of Bar Examiners, rather than to the State Bar, a payment model that makes analytical sense and construes the pro hac vice fee less as annual dues and more as admission fees wholly apart from the disciplinary section.) At a session of the Access to Justice chairs on Saturday, March 24, 2007, representatives from several states with pro hac vice fees directed towards legal aid disputed any contention that increased pro hac vice leads to increased discipline. There has been a similar absence of disciplinary problems in Arizona among pro hac vice attorneys, which makes sense given the usage by many out-of-state lawyers of experienced and diligent local counsel as a means of ensuring compliance with Arizona's practice norms.

Arizona. The State Bar receives approximately ten complaints per year involving pro hac vice attorneys compared with over 2,000 complaints received per year involving members of the State Bar. Thus, the ratio of complaints per active member is approximately 6 to 1, while compared to pro hac vice attorneys, the ratio is 50 to 1. Moreover, it is understood that a number of complaints filed against pro hac vice attorneys are quickly dismissed because they are based on a misunderstanding that these individuals are practicing law without a license.

Consequently, the information that has come forth over the past several years establishes that all of the pro hac vice income is not needed to enforce the Rules of Professional Conduct against pro hac vice attorneys, and therefore the Legal Services Committee proposes that Arizona follow the lead of several other states in allocating a portion of the pro hac vice income to provide much needed supplemental funding to Arizona's legal services providers.

## **II. Legal Services Committee**

The mission of the State Bar of Arizona Legal Services Committee is to study and recommend ways to meet the legal needs of the indigent and working-poor in Arizona. The current membership of the Committee is as follows:

The Honorable James G. Blake, (Chair), Scottsdale City Court  
Todd F. Lang, (Past-Chair), Arizona Citizens Clean Elections Commission  
Dan L. Bagatell, Perkins Coie Brown & Bain PA  
The Honorable Thomas J. Berning, Tucson City Court  
The Honorable J. William Brammer, Arizona Court of Appeals  
Anthony B. Ching, Sole Practitioner  
Hyung S. Choi, Choi & Fabian PLC  
William DeSantiago, Catholic Charities Community Services  
Michael J. Donovan, Sole Practitioner  
Robert M. Ferrier, Quarles & Brady Streich Lang LLP  
Kelly J. Flood, Shughart Thomson & Kilroy PC  
Patricia J. Gerrich, Director, Volunteer Lawyers Program  
Mary Dolores Guerra, Phoenix International School of Law  
Paula Kay Harms, Office of the Federal Public Defender  
Jonae A. Harrison, Internal Revenue Service District Counsel  
Levon Henry, Director, DNA-People's Legal Services, Inc.  
Rachel C. Hernandez, United States Attorney's Office  
Timothy M Hogan, Arizona Center for Law in the Public Interest  
The Honorable Hugh E. Hegyi, Maricopa County Superior Court  
The Honorable Patrick Irvine, Arizona Court of Appeals  
Lillian Johnson, Community Legal Services  
Paul D. Julien, Arizona Supreme Court  
Ellen S. Katz, William E. Morris Institute for Justice  
Joseph C. Kreamer, Hopkins & Kreamer LLP  
The Honorable Virginia A. Mathis, United States District Court of Arizona  
Michele M. Mirto, Southern Arizona Legal Aid, Inc.  
Paula C. Nailon, University of Arizona James E. Rogers College of Law

Ronald Ozer, Ely, Bettini, Ulman & Rosenblatt  
Gary M. Restaino, United States Attorney's Office  
David B. Rosenbaum, Osborn Maledon PA  
K Royal, Sandra Day O'Connor College of Law at Arizona State University  
Maria Salapska, Law Offices of Maria Salapska, PLLC  
Diana L. Varela, Arizona Attorney General's Office  
Anthony Young, Director, Southern Arizona Legal Aid

### **III. Pro Hac Vice Income**

Pro hac vice is Latin for "this time only" and refers to the application of an out-of-state lawyer to appear in court for a particular case, even though a lawyer is not licensed to practice in that state.

In Arizona, the State Bar administers the pro hac vice program established by the Arizona Supreme Court. *See* Rule 33(a)(3)(A), Ariz. R. Sup. Ct. Those appearing pro hac vice are required to pay a nonrefundable application fee equal to 85% of the current dues paid by active members of the State Bar of Arizona. *Id.* A renewal fee in the same amount must be paid for each additional year that the nonresident attorney continues to act as counsel in the cause. Rule 33(a)(8). The income collected through the pro hac vice fees was approximately \$408,000 in 2006, and is projected to be \$460,000 in 2007.

Twenty-two states and the District of Columbia have instituted fees that lawyers must pay to appear pro hac vice. In recent years, several states that did not already have a pro hac vice fee have instituted one and then used the revenue to fund civil legal services for the poor. In 2001, Oregon became the first to authorize the fee for legal services, followed relatively quickly by Mississippi, Texas, Missouri and New Mexico.<sup>7</sup>

In Oregon, the legislature authorized the rule in 2001, which was then implemented by the state supreme court in 2002. The fee is \$250 per case per year and in 2004 generated \$93,000. The legislation provides that the funds will be used for "legal services provided through the Legal Services Program established under ORS 9.572", which requires the Oregon State Bar to provide standards and guidelines for legal service providers receiving funding.

In Mississippi, the Supreme Court authorized the pro hac vice rule in early 2003. The fee is \$220, of which is allocated for legal services. The first year it generated approximately \$175,000. The payments are made to the Mississippi Bar to be used to provide legal services to the indigent.

In Texas, the Texas rule was authorized by the legislature in September, 2003. The fee per case in Texas is \$250, and it brought in about \$366,500 in 2005. The funding is administered

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<sup>7</sup> ABA Project to Expand Resources for Legal Services (PERLS) manual, Innovative Fundraising Ideas for Legal Services – 2004 Edition, at [www.abanet.org/legalservices/downloads/sclaid/innovatefund2004.pdf](http://www.abanet.org/legalservices/downloads/sclaid/innovatefund2004.pdf), at p. 25. The Legal Services Committee would like to thank Kent Moffitt, a second year law student at the Phoenix Law School, for his help in researching the pro hac vice proposals in the other states.



by the Texas IOLTA program, which also administers the state legislative (filing fee surcharge and appropriation) funds for legal services.

In Missouri, the Supreme Court authorized the rule in 2002. The fee is \$100, it generated \$93,500 in 2004, and the funds go to civil legal services programs in the state. In New Mexico, the Supreme Court authorized the rule in late 2004. The fee is \$250, and it is estimated that the first year revenue will be \$75,000. Funds are paid to the New Mexico State Bar Foundation for distribution to legal services providers. The Resource Development Subcommittee of the Legal Services and Program Committee of the State Bar is developing a distribution process.

The Rules of Professional Conduct call on Arizona lawyers to devote professional time and resources to increase access to justice by those unable to afford legal services. Moreover, Rule 38(e)(1), Rules of the Supreme Court of Arizona, provides that “[i]ndividuals admitted to the practice of law in Arizona have a responsibility to provide competent legal services for all persons, including those unable to pay for such services”.

Lawyers who make pro hac vice appearances in Arizona from other states are not likely to devote their time and resources to help increase access to justice in Arizona simply because they do not by definition reside or work in Arizona. These lawyers are not required to participate in programs required of Arizona lawyers such as mandatory arbitration and are not likely to maintain their client trust accounts with Arizona banks thereby decreasing the amount of interest revenue generated for Arizona’s legal services providers through the Interest on Lawyers Trust Accounts (IOLTA) program. *See* Appendix B. Moreover, these lawyers are unlikely to devote 50 hours a year in pro bono services in Arizona as recommended in E.R. 6.1.

It is appropriate to allocate a portion of the pro hac vice fees generated from these lawyers for the privilege of appearing and practicing law in Arizona so that they may join the efforts of the State Bar of Arizona membership in increasing access to justice by the indigent in our state. Amending Rule 38(a) as set forth in Appendix C to increase the fees paid by pro hac vice attorneys by fifteen percent and allocating this additional fifteen percent to our legal services providers is a fair proposal to help accomplish our profession’s commitment to assure that legal services are available to all persons regardless of their income or status.

#### **IV. Conclusion**

The legal needs of the poor in Arizona are not being met under the current system. The State Bar of Arizona must lead the effort to increase the resources available to our legal services providers to ensure all Arizonans have access to justice. By using pro hac vice revenues to supplement the funding to Arizona’s legal services providers many people in Arizona will be able to obtain the assistance of a lawyer who are not able to under the current system. Moreover, this allocation will assure that all of those who practice law in Arizona participate in the State Bar’s mandate of increasing access to justice. This will in turn help our judges do their jobs and increase the image of the profession in the eyes of the public.

## APPENDIX A

### 2007 Federal Poverty Guidelines<sup>8</sup>

Size of Family	125 percent of federal poverty guidelines	200 percent of federal poverty guidelines
1	\$12,763	\$20,420
2	\$17,113	\$27,380
3	\$21,463	\$30,340
4	\$25,813	\$41,300
5	\$30,163	\$48,260
6	\$34,513	\$55,220
7	\$38,863	\$62,180
8	\$43,213	\$69,140

- **125 percent:** For family units with more than 8 members, add \$4,350 for each additional member.
- **200 percent:** For family units with more than 8 members, add \$6,960 for each additional member.

<sup>8</sup> On February 23, 2007, LSC published its income eligibility guidelines for 2007, which establish maximum income levels for individuals eligible for LSC-funded civil legal services. LSC's guidelines are 125% of the Federal Poverty Guidelines established by the U.S. Department of Health and Human Services on January 24, 2007. 72 Fed. Reg. 8114 (Feb. 23, 2007) (to be codified at 45 C.F.R. pt. 1611), available at [www.lsc.gov/foia2/pdfs/epr/1611\\_Appx\\_A\\_2007.pdf](http://www.lsc.gov/foia2/pdfs/epr/1611_Appx_A_2007.pdf).

## APPENDIX B

### IOLTA REVENUE & GRANT HISTORY IN ARIZONA COMPARED TO POVERTY POPULATION & INFLATION<sup>9</sup>

Year	IOLTA Revenue	IOLTA Revenue in Constant 1985 Dollars	IOLTA Grants	Poverty Population	Grant Dollars Per Poor Person
1985	\$985,341	\$985,341	\$120,087	345,000	\$0.35
1986	\$1,528,531	\$1,497,960	\$479,684	484,000	\$0.99
1987	\$1,727,297	\$1,640,932	\$856,410	444,000	\$1.93
1988	\$1,736,482	\$1,580,199	\$1,006,000	491,000	\$2.05
1989	\$1,952,431	\$1,698,615	\$1,405,000	502,000	\$2.80
1990	\$2,238,837	\$1,835,846	\$1,524,000	484,000	\$3.15
1991	\$2,229,261	\$1,761,116	\$1,763,000	532,000	\$3.31
1992	\$1,342,009	\$1,033,347	\$1,396,000	607,000	\$2.30
1993	\$1,044,296	\$783,222	\$670,000	615,000	\$1.09
1994	\$1,159,356	\$846,330	\$670,000	673,000	\$1.00
1995	\$1,320,033	\$937,223	\$750,000	700,000	\$1.07
1996	\$1,391,380	\$946,138	\$816,500	980,000	\$0.83
1997	\$1,508,607	\$995,681	\$874,000	797,000	\$1.10
1998	\$1,530,045	\$994,529	\$966,500	812,000	\$1.19
1999	\$1,280,671	\$806,823	\$978,500	579,000	\$1.69
2000	\$1,617,652	\$970,591	\$788,000	590,000	\$1.34
2001	\$1,463,193	\$834,020	\$948,500	778,000	\$1.22
2002	\$1,263,044		\$992,899	731,707	\$1.36
2003	\$1,113,004		\$734,143	782,551	\$0.94
2004	\$1,122,915		\$678,666	800,027	\$0.85
2005	\$1,877,997		\$763,859	827,837	\$0.92
2006	\$2,419,232		\$1,080,468	958,392	\$1.13

<sup>9</sup> This table was compiled from information provided by the Arizona Foundation for Legal Services & Education.

## **APPENDIX C**

### **PROPOSED AMENDMENT TO RULE 38, RULES OF THE SUPREME COURT OF ARIZONA**

#### **Rule 38. Special Exceptions to Standard Examination and Admission Process**

##### **(a) Admission Pro Hac Vice.**

1. Eligibility. An attorney who is not a member of the State Bar of Arizona, but is currently a member in good standing of the bar of another state or eligible to practice before the highest court in any state, territory or insular possession of the United States (hereinafter called a nonresident attorney) and who is of good moral character and is familiar with the ethics, professionalism and practices of the legal profession in the State of Arizona, may appear as counsel pro hac vice in a particular case before any state or local court, board or administrative agency in the State of Arizona upon compliance with this rule. However, no person is eligible to appear as counsel pursuant to this rule if that person (a) is a resident of the State of Arizona, or (b) is regularly employed in the State of Arizona, or (c) is regularly engaged in substantial business, professional, or other activities in the State of Arizona.

2. Association of Local Counsel. No nonresident attorney may appear pro hac vice before any court, board or administrative agency of this state unless the nonresident attorney has associated in that cause an attorney who is a member in good standing of the State Bar of Arizona (hereinafter called local counsel). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the cause. Local counsel may be required to personally appear and participate in pretrial conferences, hearings, trials, or other proceedings conducted before the court, board, or administrative agency when the court, board, or administrative agency deems such appearance and participation appropriate. Local counsel associating with a nonresident attorney in a particular cause shall accept joint responsibility with the nonresident attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.

3. Procedure for Applying. Appearance pro hac vice in a cause is subject to the discretion and approval of the court, board, or administrative agency where such cause is pending. A nonresident attorney desiring to appear pro hac vice under this rule shall comply with the procedures set forth herein for each matter where pro hac vice status is requested. For good cause shown, a court, board, or administrative agency may permit a nonresident attorney to appear pro hac vice on a temporary basis prior to the completion by the nonresident attorney of the application procedures set forth herein. At the time such temporary admission is granted, the court, board, or administrative agency shall specify a time period for the nonresident attorney to complete the application procedures, and any temporary pro hac vice admission shall be revoked in the event of subsequent failure by the nonresident attorney to so complete the application procedures.

A. Verified Application to State Bar of Arizona. In order to appear as counsel in any matter pending before a court, board, or administrative agency in the State of Arizona, a nonresident attorney shall file with the State Bar of Arizona an original and one copy of a verified application together with a certificate from the state bar or from the clerk of the highest admitting court of each state, territory or insular possession of the United States in which the nonresident attorney

has been admitted to practice law certifying the nonresident attorney's date of admission to such jurisdiction and the current status of the nonresident attorney's membership or eligibility to practice therein and a non-refundable application fee equal to ~~85%~~ of the current dues paid by active members of the State Bar of Arizona for the calendar year in which such application is filed; provided that not more than one application fee may be required per nonresident attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the nonresident attorney; and further provided that the requirement of an application fee shall be waived to permit pro bono representation of an indigent client or clients. An attorney seeking a fee waiver under this provision shall include in the application a verification that all clients represented in the action are indigent and that no attorney fee shall be paid by the client. "Indigent" is defined as those individuals whose gross income is at or below 125% of the federal poverty guidelines, as calculated in conformity with the eligibility requirements for Legal Services Corporation grantees, currently codified at 45 C.F.R. Section 1611.

FIFTEEN PERCENT OF THE NON-REFUNDABLE APPLICATION FEE PAID PURSUANT TO THIS SECTION SHALL BE DEPOSITED INTO A CIVIL LEGAL SERVICES FUND TO BE ADMINISTERED BY THE ARIZONA FOUNDATION FOR LEGAL SERVICES AND EDUCATION AND SHALL BE USED EXCLUSIVELY TO FUND ORGANIZATIONS THAT PROVIDE LEGAL SERVICES TO INDIGENT PERSONS IN CIVIL CASES.

B. Notice of Receipt by State Bar of Complete Application. Upon receipt of the verified application and fee from the nonresident attorney as described above, the State Bar of Arizona shall issue to local counsel a Notice of Receipt of Complete Application which states: (1) whether the nonresident attorney has previously made any application or motion pursuant to this rule within the preceding three years; (2) the date of any such application or motion; and (3) whether the application or motion was granted or denied by the court or administrative agency. The State Bar of Arizona Notice shall include as exhibits: (1) the original verified application and (2) the original certificate(s) of good standing. Copies of verified applications, certificates of good standing and orders granting, denying or revoking applications to appear pro hac vice shall be retained by the State Bar of Arizona for three (3) years.

C. Motion to Associate Counsel Pro Hac Vice. Local counsel shall file a motion to associate counsel pro hac vice with the court, board, or administrative agency where the cause is pending, together with proof of service on all parties in accordance with Arizona Rules of Civil Procedure. The motion to associate counsel pro hac vice shall include as exhibits: (1) the original verified application; (2) the original certificates of good standing; and (3) the State Bar of Arizona Notice. The motion to associate counsel pro hac vice shall also be accompanied by a proposed order granting or denying the motion. A copy of each order granting or denying the motion as entered by the court, board, or administrative agency shall be mailed by local counsel to the State Bar of Arizona.

D. Entry of Order. The order granting or denying the motion to associate counsel pro hac vice shall be entered by the court, board, or administrative agency no later than 20 days (exclusive of weekends and holidays) after the filing of such motion. A nonresident attorney shall make no appearance in a cause until the court, board, or administrative agency where the cause is pending enters the order granting the motion to associate counsel pro hac vice. The order granting pro hac vice status shall be valid for a period of one year from the date of entry, and shall be renewed for subsequent one year periods upon compliance with renewal procedures as specified herein.

4. Verified Application. The verified application required by this rule shall be on a form approved by the Board of Governors of the State Bar of Arizona and available at the clerk of the court, board, or administrative agency where such cause is pending and shall state:

A. the title of the case or cause, court, board, or agency and docket number in which the nonresident attorney will be seeking to appear pro hac vice, and whether this case or cause is a related or consolidated matter for which the nonresident attorney has previously applied to appear pro hac vice;

B. the nonresident attorney's residence and office address;

C. the court(s) to which the nonresident attorney has been admitted to practice and the date(s) of such admission;

D. that the nonresident attorney is a member in good standing of such court(s);

E. that the nonresident attorney is not currently disbarred or suspended in any court;

F. whether the nonresident attorney is currently subject to any pending disciplinary proceeding by any court, agency or organization authorized to discipline attorneys at law, and if so pending, the application shall specify the jurisdiction, the nature of the matter under investigation and the name and address of the disciplinary authority investigating the matter;

G. whether the nonresident attorney has ever been disciplined by any court, agency, or organization authorized to discipline attorneys at law;

H. the court, board, or administrative agency, title of cause and docket number in which the nonresident attorney has filed an application to appear as counsel under this rule in this state in the preceding three years, the date of each application, and whether it was granted;

I. the name, address and telephone number of local counsel;

J. the name of each party in the cause and the name and address of counsel of record who is appearing for each party;

K. that the nonresident attorney certifies that he or she shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Rule 46(b), Rules of the Supreme Court;

L. that the nonresident will review and comply with appropriate rules of procedure as required in the underlying cause; and

M. that the nonresident attorney understands and shall comply with the standards of professional conduct required of members of the State Bar of Arizona.

5. Discretion. The granting or denial of a motion to associate counsel pro hac vice pursuant to this rule by the court, board, or administrative agency is discretionary. The court, board, or administrative agency may revoke the authority of a nonresident attorney to make continued appearances pursuant to this rule. Absent special circumstances, repeated appearances by any

person pursuant to this rule may be the cause for denial of the motion to associate counsel pro hac vice. Such special circumstances may include, but are not limited to, the following:

A. a showing that the cause involves a complex area of law in which the nonresident attorney possesses a special expertise, or

B. a lack of local counsel with expertise in the area of law involved in the cause.

6. Transfer. The nonresident attorney shall be deemed admitted in the event venue in such action is transferred to another county or court or is appealed; provided, however, that the court having jurisdiction over such transferred or appealed cause may revoke the authority of the nonresident attorney to appear pro hac vice.

7. Continuing Duties to Advise of Changes in Status. A nonresident attorney admitted pro hac vice shall have the continuing obligation during the period of such admission to promptly advise the State Bar of Arizona of a disposition made of pending charges or the institution of any new disciplinary proceedings or investigations. The State Bar of Arizona shall then advise any court, board, or administrative agency where the nonresident attorney has been admitted pro hac vice of any such information. A nonresident attorney shall promptly advise the State Bar of Arizona if permission to appear pro hac vice pursuant to this rule is revoked by any court, board, or administrative agency.

8. Renewal of Application. On or before each anniversary date of the filing of the verified application with the State Bar of Arizona, local counsel must certify to the State Bar of Arizona whether (a) the nonresident attorney continues to act as counsel in the cause; or (b) such cause has been adjudicated to a final conclusion or is otherwise concluded. Any nonresident attorney who continues to act as counsel in the cause shall remit to the State Bar of Arizona on or before each anniversary date a fee equal to 85% of the current dues paid by active members of the State Bar of Arizona for the calendar year in which such renewal is sought, unless the nonresident attorney is exclusively engaged in pro bono representation of an indigent client or clients. No fee shall be paid under this section if the fee was waived under paragraph (a)(3)(A) of this rule, the client remains indigent, and no attorney fee shall be paid by the client.

FIFTEEN PERCENT OF THE RENEWAL FEE PAID PURSUANT TO THIS SECTION SHALL BE DEPOSITED INTO A CIVIL LEGAL SERVICES FUND TO BE ADMINISTERED BY THE ARIZONA FOUNDATION FOR LEGAL SERVICES AND EDUCATION AND SHALL BE USED EXCLUSIVELY TO FUND ORGANIZATIONS THAT PROVIDE LEGAL SERVICES TO INDIGENT PERSONS IN CIVIL CASES.

9. Failure to Renew. Any nonresident attorney who continues to appear pro hac vice in a cause and fails to pay the renewal fees set forth in paragraph (a)(8) of this rule shall be suspended from appearance in any cause upon the expiration of a period of thirty days from the anniversary date. The executive director of the State Bar of Arizona shall notify the nonresident attorney and local counsel of the suspension and shall file a certified copy of the notice with the court, board or administrative agency where the cause is filed. The nonresident attorney may be reinstated upon the payment of fees set forth in paragraph (a)(8) of this rule and a \$50 late penalty. Upon payment of all accrued fees and late penalty, the executive director shall reinstate the nonresident attorney and shall certify such reinstatement to the court, board, or administrative agency where the cause is filed.

10. Annual Reporting. The State Bar of Arizona shall prepare an annual report which shall list: (a) all applications filed pursuant to this rule during the preceding twelve months; (b) the names of all applicants; and (c) whether the application was granted or denied. The report shall be available for inspection at the offices of the State Bar of Arizona, and shall be provided to the Supreme Court.

11. Disciplinary Jurisdiction of the State Bar of Arizona. As provided in Rule 46(b), Rules of the Supreme Court, a nonresident attorney admitted pro hac vice pursuant to these rules shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar of Arizona.

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